IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

CONTEMPT PETITION NO.189 OF 1998
IN
WRIT PETITION NO. 5981 OF 1997

General Employees Association]
a registered Trade Union,]
having its office at Tel]
Rasayan Bhavan, Tilak Road]
Dadar, Mumbai-400014]..Petitioners

Vs.

1. M/s. Rashtriya Chemicals]
& Fertilizers Ltd.]
having its office at]
Priyadarshini, Eastern]
Express Highway, Mumbai]
400022]
]
2. Shri.D.K.Varma]
Chairman and Managing]
Director, Rastriya]
Chemicals and]
Fertilizers Ltd.]
Priyadarshini, Eastern]
Express Highway, Mumbai]
400022]
]
3. Shri.Sinha]
Managing Director]
(Technical) Rastriya]
Chemicals and Fertilizers]
Ltd. Priyadarshini,]
Eastern Express Highway]
Mumbai-400022]
]
4. Shri.V.Balsubramanyam]
Executive Director]
(Personal)Rastriya]
Chemicals and Fertilizers]
Ltd. Priyadarshini,]
Eastern Express Highway]
Mumbai-400022]
]
5. Shri.M.S.Vernekar]
General Manager (P&A)]
Rastriya Chemicals and]
Fertilizers Ltd.]
Thal Alibag, Dist.]

Raigad]..Respondents

....

Shri.Suresh S.Pakale for Petitioner
Shri.J.P.Cama with Ms.Swati Deshpande i/b
M/s. Bodhanwala & Co. for Respondents

....

CORAM : B.H.MARLAPALLE,J.

DATE : FEB. 16, 17 & 18,2005

ORAL JUDGMENT:

1. The Petitioner is a registered Trade Union under the Trade Unions Act, 1926 and represents mainly the contract labours employed under the Respondent no.1. It had filed Writ Petition No. 5981 of 1997 against the respondent no.1 for Abolition of Contract Labour System prevailing under it in respect of the contract workers numbering about 276. It had also prayed for directions not to remove any of these contract workers during the pendency of the main petition.

2. By an order dated 26.2.1998 passed in W.P.No. 5981 of 1997, a Division Bench of this Court issued ad-interim directions against the Respondents no.1 and 2 in the said petition not to terminate the services of the employees described at Exhibit-A to the petition and who may be working as on that date. On 23.3.1998 when Writ Petition No. 5981 of 1997 came up for hearing on admission, another Division Bench granted Rule and disposed of the petition by

making Rule absolute in terms of the following order:

1. The respondent no.3 Union of India is directed to refer the question of abolition of contract labour in respect of the work performed by the employees listed in Exhibit-A to the petition. The said reference shall be made within four weeks from today.

2. The Central Advisory Board is directed to hear the representative of parties hereto and submit their report to the Central Government within three months from the date of the reference under clause (1) above.

3. The Central Government is directed to take decision under Section 10 of the Contract Labour (R & A) Act 1970 in respect of the work performed by persons, list in Exhibit-A hereto within four weeks from the date of receipt of the report of the Central Advisory Board.

4. Till the decision is taken as directed above, the respondent nos.1 and 2 shall not remove the persons presently in employment and mentioned in Exhibit-A hereto and shall continue them in employment on the same terms and conditions. However, this restriction shall not apply in case of misconduct, violent conduct or any other similar reasons."

3. It further appears that the Union had moved Writ Petitions Nos. 5979 of 1997, 5983 of 1997 and 5985 of 1997 for the house keeping contract workers and security/watchmen employed on contract basis, whereas W.P.No. 5983 of 1997 had filed for the contract labours employed in Garden. W.P.No. 5981 of 1997 was filed for the contract labours working in civil maintenance department as it appears from the letter

dated 12.5.1998 issued by the General Employees Association. By the said letter, it was contended that the Respondent no.1 (THAL Unit) did not pay the wages of contract labour as per the order passed by this Court on 23.3.1998 for the period from February, 1998 to April 1998 in respect of civil maintenance contractors covering 58 contract workmen and from December, 1997 to April, 1998 in respect of another group of 90 contract labour workers. The Union addressed yet another letter on 3.6.1990 and alleged that the order passed by this Court on 23.3.1998, was not complied with in respect of 90 contract workers engaged through Thal Mazdoor Sahakari Sangh Ltd.(TMSS for short) inasmuch as the Management of respondent no.1 had suddenly stopped giving them jobs from 1.6.1998 and they were not allowed to enter the factory premises. It also raised the grievance regarding payment of salary from December, 1997. This Contempt Petition was finally moved on or about 29.6.1998 alleging that (a) after the order dated 23.3.1998 was passed by this Court, the respondents removed 67 employees from service and (b) 90 contract labours were not paid their monthly emoluments. It further alleged that 58 of the contract workmen were removed after the order dated 23.3.1998.

4. In the order dated 28.7.1998 passed in this Petition, it was noted that the contract workers

whose names were mentioned in Exhibit-D and numbering 67 were discontinued and 90 contract workers whose names were listed in Exhibit-E, their conditions of service were altered.

5. The respondents filed affidvit-in-reply on or about 31.8.1998 and denied the allegations that there was breach of the order passed by this Court on 23.3.1998 by any one of them in respect of 90 contract workers engaged through TMSS and 67 other contract workers. It specifically stated that the 67 contract workers were not in the employment as on 26.2.1998 or as on 23.3.1998 and infact, they were discontinued much prior to the said dates. So far as the contract workers engaged through TMSS are concerned, it was stated that there was no change in the terms and conditions of their service after the orders were passed by this Court and therefore, the Contempt Petition was required to be dismissed. It further stated that on any given date, TMSS had engaged only 54 workers out of the 90 workers on its roll in the establishment of respondent no.1 and all the 90 workers were not engaged on any given day and this system of rotation was continued from 1.6.1998. It was further pointed out that pursuant to the tenders invited, the respondents had finalised a new agreement with TMSS for a period of one year i.e. from 1.12.1997 to 30.11.1998 and an amount of

Rs.12.60 lakhs was already paid to the contractor towards this agreement. The affidavit further stated that the contractor had informed the respondents that the regular wages were being paid to all the concerned contract workers and some of the workers themselves were not willing to attend to their duties.

. In response to this reply of the respondents, the Union filed a rejoinder on or about 25.11.1998 and alleged that there was discontinuation of all the contract workers engaged through TMSS and these workers were receiving on an average an amount of Rs.3400/- per month towards their salary in pursuant to the Settlement signed between the contractor and the Union. This Settlement was valid for a period of four years with effect from 1.7.1995, unless terminated by either party giving notice in writing as per the provisions of the Industrial Disputes Act, 1947 and the Rules made thereunder. The respondents filed additional affidavits on 11.1.1999, 1.2.1999 and consequently the Union filed rejoinder on 16.2.1999. The respondents filed yet another additional affidavit on or about 3.3.1999 and elaborately dealt with the issue of payment of wages to the contract workers engaged through TMSS. The respondents contended that towards the contract signed between respondent no.1 and the contractor

(TMSS) an amount of Rs.24,65,778/- was already paid to the contractor for payment of wages to the contract workers engaged by it from December, 1997 to November, 1998 and the contractor had from the said amount, disbursed by way of advance to the contract workers an amount of Rs.10,64,000/- while the balance amount of Rs.14,01,778/- was retained by the contractor. In addition, it was contended that even if the contract workers engaged through TMSS were required to be paid as per the purported agreement signed between the Union and the said contractor, the total amount of salary payable for the period from December, 1997 to November, 1998 would come to Rs.21,28,088/- as against the amount of Rs.24,65,778/- paid to the contractor. Thus, the respondents were not guilty of acting in breach of the orders passed by this Court in Writ Petition No. 5981 of 1997 and they had fully discharged their burden regarding payment of wages for the contract workers engaged through that Agency. It has been further stated by the respondents that the contract awarded to TMSS expired towards the end of November, 1998 and it had offered to the same agency its renewal at least for a period of two months but the same was not accepted by the contractor on the ground that the workers engaged by it were not inclined to accept the employment and therefore, the contract was awarded to M/s. Mini Engineering which also failed

and therefore finally they engaged M/s.Krishna Enterprises. The new contractor addressed individual letters dated 10.12.1998 to each of the 90 workers to report for work immediately but none of them reported as intimated by the new contractor to the respondent no.1 vide letter dated 16.12.1998. The respondent no.1 Management addressed a letter to the Petitioner-Union on 17.12.1998 informing about the refusal on the part of contract workers earlier engaged through TMSS. It also contended that on 5.1.1999 the respondent-Management again called upon each of these 90 workers to report for duty within three days from the date of receipt of the letter with M/s.Krishna Engineering but none responded.

6. Though initially the instant contempt petition was moved for two sets of contract workers i.e. one set of the workers whose names are listed in Exhibit-D and other set of workers whose names are listed in Exhibit-E. From the first set of 67 contract workers, admittedly, the issue remained only regarding 61 workers. The Management had taken a specific stand in W.P.No.5981 of 1997 that even these workers were not in the employment through any contractor as on 26.2.1998 or 23.3.1998. It appears that the stand of the Management regarding these 61 workers, was in dispute including the issue regarding subsequent discontinuation of the 90 workers engaged

through TMSS.

7. This Contempt Petition came to be disposed of by an order dated 9.3.1999 in terms of the following directions:

(i) Respondent No.1 to apply to the Division Bench for clarification/modification of the order dated 23.3.1998 passed in Writ Petition No.5181 of 1997 within a period of two weeks from today.

(ii) Respondent No.1 shall file an undertaking in this Court undertaking therein to deposit in this Court an amount of Rs.30 lakhs within a period of six weeks from today. It is clarified that respondent no.1 shall be at liberty to apply to the Division Bench either for an order not requiring to deposit any amount of requiring it them to deposit a lesser amount or for extension of time limit for depositing the amount. It is directed that in case Respondent no.1 does not get any order from the Division Bench in this regard, Respondent no.1 shall deposit the amount of Rs.30 lakhs in this Court on or before expiry of the afore referred period. The Addl. Registrar (Judicial) shall permit the Petitioner-Union to withdraw that amount to be paid to the workers involved. It is clarified that Respondent no.1 is at liberty to move the Division Bench for any orders in relation to the terms and security on which the amount is permitted to be withdrawn by the Petitioner-Union.

(iii) The 90 workers who according to the petitioners are not presently being given employment shall report for duty at the gate of respondent no.1’s factory at Thal on 15.3.1999 at 8 O’clock in the morning. Of these 90 workers reporting respondent no. 1

shall offer employment to 54 of these 90 workers and on the same day Respondent no.1 shall also prepare a calender indicating as to how these 90 workers are to be given employment by rotation. Shri.Sawant, Assistant Labour Commissioner, is appointed as Commissioner. He is directed to remain present at the above referred place on 15.3.1999 at 8 O'clock in the morning and in his presence the Petitioners will be given employment and the roster has to be worked out. It is clarified that this is without prejudice to the rights and contentions of both the parties and this is being made as a workable arrangement to operate till the Division Bench makes further orders. The learned Counsel for respondent no.1 states that the 90 workers shall be employed by them through the contractor. This is permitted to be done without prejudice to the contentions of the petitioner that they are to be directly employed by Respondent no.1.

(iv) Cost of the Commissioner is quantified at Rs.5000/- to be paid by the Petitioners directly.

(v) The Contempt Petition stands disposed of."

. The respondents deposited an amount of Rs.30 lakhs and 90 workers reported for work on 15.3.1999 and they continued to be employed on the daily wages of Rs.75/-.

8. Civil Application No.2573 of 1999 came to be moved in Writ Petition No. 5981 of 1997, pursuant to the order dated 9.3.1999 passed while disposing of the instant Contempt Petition, by the respondent

no.1. By an order dated 5.9.2000 the Division Bench (Coram: A.P.Shah and V.C.Daga, JJ.) with the consent of both the parties, referred the following issues to the Deputy Chief Labour Commissioner, Mumbai for adjudication within a period of three months. The amount of Rs.30 lakhs deposited was directed to be invested with Nationalised Bank in fixed deposits.

ISSUES

I. Whether 61 workers entered through different contractors for civil and maintenance work, were in the employment on the date of the order of the Division Bench dated 23.3.1998 ?

II. Whether the above 61 workers offered to work after 23.3.1998 and they were denied work by the Company or they refused to report to work as contended by the Company?

III. Whether the terms and conditions of the 90 workers engaged through Thal Mazdoor Sahakari Sangh Ltd. were varied after 23.3.1998?

IV. Whether 90 workers in question were engaged simultaneously or they were given work on rotation basis?

9. The Deputy Chief Labour Commissioner submitted his report on 29.1.2001 and the operative portion of the said report read thus:

Q.1 Whether 61 workers engaged through different contractors for civil and maintenance work were in the employment

on the date of order of Division Bench dated 23.3.1998?

Ans: Yes.

Q.2 Whether the above 61 workers offered to work after 23.3.1998 and they were denied work by the Company or they refused to report work as contended by the Company?

Ans: The Company was not able to produce any evidence as if they have offered the work to these workmen and the workmen refused to work. In the absence of such evidence, I accept that these workers offered to work after first order of the High Court dated 26.2.1998 and 23.3.1998.

Q.3 Whether the terms and conditions of the 90 workers entered through Thal Mazdoor Sahakari Sangh were varied after 23.3.1998?

Ans: Yes

Q.4 Whether 90 workers in question were engaged simultaneously or they were given work on rotation basis?

Ans: The Company was not able to show any tangible evidence regarding the introduction in rotation system. Prior to the orders of the Honourable High Court in the year 1998, in the absence of such evidence, these workmen are treated as employed simultaneously instead of on rotation system.

10. Civil Application No. 2573 of 1999 came up for hearing before this Court and it was rejected vide order dated 11.2.2002 passed by the Division Bench (Coram : R.M.Lodha and S.A.Bobade, JJ.). While the Division Bench came heavily on the applicant-Management, it criticized the findings of the Deputy Chief Labour Commissioner with equal

force. It did not appreciate the action of the respondent-Management in seeking declarations as set out in the application. It further held that there was no ambiguity in the order passed in Writ Petition No. 5981 of 1997 on 23.3.1998 and therefore, there was no occasion for referring any issues for adjudication to the Deputy Labour Commissioner. The report of the Deputy Labour Commissioner submitted on 29.1.12001, was also rejected. As the said conclusions suffered from various infirmities and more particularly, the aspects which were not called for, were gone into by the Deputy Chief Labour Commissioner. The Division Bench further held that the findings recorded by the Deputy Chief Labour Commissioner, were without any reliable evidence. Regarding 61 workmen, the Division Bench noted that as a matter of fact, the said issue had been under serious dispute between the Management which was consistently saying that the said workmen were not in the employment on 23.3.1998. Thus, the findings of the Deputy Chief Labour Commissioner on all the four issues came to be set aside.

11. Civil Application No. 39 of 2002, came to be moved in the instant Contempt Petition for its restoration consequent to the order passed by the Division Bench in Civil Application No. 2573 of 1999 in Writ Petition No. 5981 of 1997. By an order

dated 27.6.2002, this Contempt Petition was restored. The amount of Rs.30 lakhs deposited by the respondents, was directed to be continued in the fixed deposits and the parties were granted liberty to take out an appropriate proceedings in this petition for suitable orders in relation to the said amount.

. Consequently, this Contempt Petition is required to be decided on merits.

12. Before proceeding further to deal with the petition on merits, it is pertinent to note that the issue of discontinuation of 61 contract workers listed in Exhibit-D has not been contested seriously and only the issue which is pressed during the course of final arguments in this petition, was regarding the arrears of payment in respect of 90 workers engaged through TMSS and more so because, after the Central Government issued Notification dated 9.1.2001 and made a reference under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 (for short 'Contract Labour Act'), almost all the contract labours covered by W.P.No. 5981 of 1997 have been reemployed.

13. Prayer clause (a) of this petition which consists of the substantial relief sought for, reads

as under:

(a) This Honourable Court be pleased to send notice to the respondent no.1 and its officers as to why contempt proceedings be not initiated against them for flouting the orders dated 26.2.1998 and 23.3.1998 passed by this Honourable Court in W.P.No. 5981 of 1997 and thereafter they be punished under the process of the Contempt of Courts Act, with further direction to take the employees whose names are enlisted to Exhibit-D in service and pay them their regular emoluments from 1.2.1998 and continue to pay to them regularly and further direct the respondents to pay unpaid salary to the employees whose names are listed in Exhibit-E to the petition and further pay them their monthly salary from December, 1997 and regularly from month to month".

. As at present, the petition survives for the following reliefs from the above reliefs.

(a) Punishing the respondents under the Contempt of Courts Act for breach of the order passed on 23.3.1998 by this Court,

(b) Payment of unpaid salary to the employees whose names are listed in Exhibit-E and

(c) Payment of arrears of salary from December, 1997.

14. It is alleged by the Petitioner-Union that till the month of December, 1997 these 90 contract workers were being paid by TMSS their monthly salary as per the agreement and it was coming to about Rs.3400/-.

However, suddenly from the month of January/February, 1998 the contractors started paying only an advance amount. Initially, the said advance amount was Rs.4000/- per month and it was subsequently reduced to Rs.2000/- per month for each worker and finally, they were all discontinued. They remained unemployed till they reported back on 15.3.1999 pursuant to the order passed by this Court on 9.3.1999 and even thereafter they were paid wages at the rate of Rs. 75/- per day. Thus, the Union claims the difference in the payment of salary from December, 1997 onwards in respect of 90 workers. The Management on the other hand, has consistently stated that it has discharged its obligation regarding payment of wages by disbursing the amount to the contractor and an amount of Rs.24,65,778/- was paid to TMSS for the period from December, 1997 to November, 1998 and in any case, the issue of recovery of backwages or difference in wages or unpaid wages either proved partly or fully, cannot be agitated in a contempt petition. The Management further urged that there was a rotation system followed by TMSS and in the contract entered with the contractor on 29.11.1997, the exact number of contract workers was not determined and the same was the case regarding the rates of wages to each such worker. The payment of wages was the responsibility of the contractor and the respondents were required to continue to employ

them on the same terms and conditions provided they were in employment as contract workers as on 26.2.1998 or 23.3.1998. Once it had placed before this Court prima facie proof that an amount of Rs.24,65,778/- was paid to the contractor, the respondents could not be hauled up for contempt within the meaning of Section 2(b) of the Contempt of Courts Act, 1971 on account of the alleged failure to maintain the same terms and conditions of employment including payment of salary, urged the respondents.

15. Mr.Pakale, the learned counsel for the Petitioner-Union in his exhaustive arguments, reiterated the stand of the Petitioner-Union taken in this Contempt Petition and submitted that the welfare of the workmen was not in seeking to punish any of the respondents for contempt but infact, the main thrust of the petitioner was for recovery of wages or the arrears thereof. He further submitted that if the workers made out a case that the contractor failed to pay them the wages at the agreed rates (as per the agreement referred to hereinabove), it was entirely the responsibility of the Management to discharge that burden and failure to do so, was certainly contemptuous. It was urged that the alleged rate of Rs.75/- per day was the creation of the Management and there was no tangible proof to accept such rate of wages. On the contrary, the

settlement between the contractor and the Petitioner-Union was in operation for the relevant period and till the month of November, 1997 the workers were being paid their salary as per the said Agreement. The workers were working for the respondents and in their premises and therefore, it was their responsibility set out under the Contract Labour Act to pay the contract workers their wages if the contractor had failed to do so and more particularly when the order passed by this Court on 23.3.1998 directed to employ these workers on the same terms and conditions till the reference was made by the Central Government under the Contract Labour Act.

16. Section 21 of the Contract Labour Act, deals with the responsibility for payment of wages and it reads as under:

21. Responsibility for payment of wages:

(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor."

17. The following issues arise for consideration in this Contempt Petition at this stage for final disposal:

A) Whether the Respondents are guilty of civil contempt within the meaning of Section 2(b) of the Contempt of Courts Act, 1971 on account of violation in service conditions or non-payment of wages/salary as claimed by the Union?

B) Whether the relief for payment of arrears in wages as claimed by the Union can be granted while deciding a Contempt Petition?

C) The mode of disbursement of the deposited amount of Rs.30 lakhs with interest accrued thereon.

. Section 2(b) of the Contempt of Courts Act, 1971 reads as under:

. 2(b) ‘Civil Contempt’ means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an Undertaking given to a Court".

. The ‘wilful disobedience’ is the term which is primary and basic ingredient of such an offence which is apparent from the definition itself.

18. In the case of *Kapildeo Prasad Sah and Others Vs. State of Bihar and others reported in (1999) 7 S.C.C. 569,* it is observed in para no.9 thus:

. "For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of the judgment or order of the court. Power to punish for contempt is to be resorted to when there is clear violation of the court’s order. Since notice of contempt and punishment for contempt is of far-reaching consequence, these powers should be invoked only when a clear case of wilful disobedience of the court’s order has been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied with. Even negligence and carelessness can amount to disobedience particularly when the attention of the person is drawn to the court’s orders and its implications. Disobedience of the court’s order strikes at the very root of the rule of law on which our system of governance is based. Power to punish for contempt is necessary for the maintenance of effective legal system. It is expected to prevent perversion of the course of justice".

. The Supreme Court further proceeded to observe that "no person can defy the court’s order and wilful would exclude casual, accidental, bona fide or unintentional acts or genuine inability to comply with the terms of the order." It further held that "a Petitioner who complains breach of the court’s order must allege deliberate or contumacious disobedience of the court’s order. "

. In the case of *R.N.Dey and Others Vs. Bhagyabati Pramanik and others reported in (2000) 4 Supreme Court Cases 400*, the use of contempt weapon was elaborated in the following words:

> . "We reiterate that the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the court’s dignity and majesty of law. Further, an aggrieved party has no right to insist that the court should exercise such jurisdiction as contempt is between a contemnor and the court. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with first appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceeding, appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by

> fraud. Even presuming that the claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High court, at the most, they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is a nullity. In such a situation, as there was no wilful or deliberate disobedience of the order, the initiation of the contempt proceedings was wholly unjustified."

. In the case of *Chhotu Ram Vs. Urvashi Gulati and Another reported in (2001) 7 S.C.C. 530,* the issue regarding the burden and standard of proof in contempt proceedings has been dealt with and explained along with the purpose of Contempt of Courts Act, 1971 in the following words:

. "The introduction of the Contempt of Courts Act, 1971 in the statute-book has been for the purposes of securing a feeling of confidence of the people in general and for due and proper administration of justice in the country. It is a powerful weapon in the hands of the law courts by reason wherefor the exercise of jurisdiction must be with due care and caution and for large interest."

. "...As regards the burden and standard of proof, the common legal phraseology ‘he who asserts must prove’ has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards ‘the standard of proof’, be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a

> criminal proceeding and that the breach shall have to be established beyond all reasonable doubt".

19. Regarding the interpretation of Section 21 of the Contract Labour Act and the liability of the Principal employer and the contractor for payment of wages, the following two decisions are required to be referred to; *(1) Hindustan Steelworks Construction Ltd. Vs. Commissioner of Labour and others reported in (1996) II CLR 610 and (2) Senior Regional Manager Food Corporation of India Culcutta Vs. Tulsidas and Bauri and others Judgement Today 1997 (5) S.C. 175.*

. In the first case, the scope of Section 21 of the Contract Labour Act was clarified in the following words:

> . "Section 21(1), however, provides that the contractor shall be responsible for the payment of wages to each worker employed by him.
>
> . Section 21(4) provides that if the contractor fails to make this payment or any part thereof, the principal employer is liable to make this payment and may recover the same from the contractor as set out in sub-section. Looking to the definition of 'wages' under the said Act, read with the definition of 'wages' in the Payment of Wages Act, which we have set out earlier, it is clear that Section 21 only deals with payment of contractual wages of the contract to each of his worker. The definition of wages would govern within its scope,

> inter alia also these amounts which the contractor is liable to pay to his workers under any Award, Settlement or Order of Court as well as the other amounts falling within the definition of wages under the Payment of Wages Act. Sub-Section (2) provides for a representative of the principal employer supervising this payment. Clearly, therefore, the wages which are subject matter of Section 21 are specified sums which are payable in presenti by the contractor under his contract employment with each worker as well as under any existing Award, Settlement or order of the Court. Section 21 does not deal with nor does it cover the obligations which are imposed upon the contractor under the provisions such as the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971. Hence, Section 21(4) will not apply to such obligations of the contractor which may be the subject matter of the dispute between the contractor and his workers at the time of disbursement of wages and it do not fall within the definition of wages under the Act."

. In the subsequent judgment in the case of Food Corporation of India (Supra), the Supreme Court held thus:

> . Section 21 postulates responsibility for payment of wages. Under Sub-section (1) a contractor shall be responsible for payment of wages to each worker employed by him as contract labours and such wages paid before the expiry of such period as may be prescribed. Under Sub-section (4), in case a contractor fails to make the payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or unpaid balance due as the case may be, to the contract labour employer of the contractor and

> recover the amounts so paid from the contractor either by deducting from any amount payable to the contractor under any contract or as a debt payable by the contractor. That liability has been prescribed under Sub-section (2) thereof which says that every principal employer shall nominate representative and the representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be duty of such representative to certify the amounts paid as wages in such manner as may be prescribed. Thus, it could be seen that the principal employer is statutorily responsible to ensure payment of the wages as per law. In case the contractor commits default in the payment of the wages, the principal employer is made responsible for due payment and in case such payment is made, he is entitled to have it recovered by deducting from any amount payable to the contractor under the contract or as a debt payable by the contractor.

20. The contract between the respondents and the TMSS signed on 29.11.1997 was made available for perusal and it was for the period from 1.12.1997 to 30.11.1998. It consists of three Annexures i.e. general terms and conditions, special terms and conditions and Scope of work-cum-schedule of rates. Nowhere there is a mention regarding the rates of wages to be paid to the contract workers by the contractor though the value of the contract was estimated at Rs.39 lakhs. In Annexure-III (scope of work cum schedule of rates) rates for individual jobs have been set out. But from that also, it is not possible to derive the daily or monthly wages payable

to each of the contract workers. It was also clarified in Annexure-II that requirement of contract workers was not of continuous nature but was need based and the contractor was to study the general pattern of the job requirement and arrange and distribute his labour as per the requirement as well as job orders.

21. The order passed by this Court on 23.3.1998 clearly implied that the contract workers who were in employment as on that day would be continued on the same terms and conditions. This would mean that the salary/wages and/or other benefits payable to each of these workers as on 23.3.1998 were protected and this order would not mean that the respondents were directed to pay the wages/salary to the contract workers. Section 21 of the Contract Labour Act states that the contractor shall be responsible for payment of wages to each worker employed by him as contract labour. So far as the principal employer is concerned, it does not have the responsibility for disbursement of wages and Sub-section (3) of Section 21 clearly states that it shall be the duty of the contractor to ensure that disbursement of wages in the presence of authorised representative of the principal employer. The principal employer has to nominate the representative duly authorised to be present at the time of disbursement of wages by the

contractor and the said representative has to certify that the amounts paid as wages were as prescribed. In addition, the principal employer has to ensure that the rate of wages/salary paid to such contract workers is not less than the minimum wages prescribed under the Minimum Wages Act, 1948 and in case the contract labour is employed for jobs which are being done by permanent employees, the parity of wages is required to be maintained. In case, the contractor fails to make the payment of wages within the prescribed period or make short payment, then the principal employer shall be liable to make the payment of wages in full or unpaid balance due as the case may be to the contract labour employed by the contractor and recover the amounts so paid from the contractor either by deducting any amount payable to the contractor under any contract or as a debt payable by the contractor.

. The allegations made in this petition are that the service conditions were varied inasmuch as the payments rates were reduced and instead of regular salary/wages, an advance was paid to the contract workers after the order was passed on 23.3.1998 by this Court. However, this allegation does not appear to be correct inasmuch as even for the months of January and February as per the xerox copies of the wages Register maintained by TMSS and submitted by

the Petitioner-Union for reference for the period from December, 1997 to November, 1998, it appears that on 10.3.1998 each worker was paid an amount of Rs.4000/- by way of an advance. Similarly, on 10.6.1998 the some amount of advance appears to have been disbursed to each of these 90 workers. Again on 24.6.1998 some workers have been paid advance of Rs.2000/- by the contractor.

22. The respondents in their replies filed from time to time and more particularly, the last reply submitted on 3.3.1999 have stated on oath that an amount of Rs.24,65,778/- was paid by the Management to the contractor-TMSS for the period from December, 1997 to November, 1998 and the contractor disbursed an amount of Rs.10,64,000/-. The balance amount of Rs.44,01,778/- was not returned to the Management and it remained with the contractor. It is further said that even if the salary rates were treated to be Rs.3400/- per month as per the Agreement relied upon in the rejoinder filed by the Petitioner-Union the total amount of salary payable even at that rate to all the 90 contract workers for the period from December, 1997 to November, 1998 would come to Rs.21,28,088/- which is less than the amount of Rs.24,65,778/- already disbursed by the Management and paid to the contractor. As per the contract between the Management and the contractor, it was

obligatory for the Management to disburse the amount in consideration of the said contract to the contractor who inturn was required to disburse the wages to his employees. For the allegations of the Union that the contract workers did not receive the regular salary and instead they were paid much less than the due amount by the Contractor, the Management cannot be held to be guilty of contempt inasmuch as there is no case to hold that it indulged in wilful disobedience of the orders passed by this Court on 23.3.1998. This order did not direct the Management to disburse the payment. The statutory obligations envisaged under the provisions of Section 21 of the Contract Labour Act, were not and cannot be altered by the order of this Court. It is only on the failure to make the payment by the contractor, the responsibility befalls on the Management. Under such circumstances, it would not be a case of wilful breach or disobedience committed by the Management or any of the respondents of the order passed by this Court on 23.3.1998.

23. At the same time, when the Management realised or it was brought to its notice that the contractor did fail in disbursing the salary/wages at the agreed rates between the contractor and the workers or the Union representing them, the principal employer is held liable to pay the full wages or the difference

as the case may be and recover the same from the contractor. In such a situation, the contentions of the Management that it has already disbursed due amounts to the contractor and therefore, the difference cannot be recovered from the Management/principal employer cannot be accepted. At the first instance, the principal employer will have to make good a difference in payment to the contract labour and subsequently take steps to cause recoveries from the contractor as contemplated under Sub-section (4) of Section 21 of the Contract Labour Act. The Petitioner-Union has been consistently agitating on this issue of short payment and this Court having taken a note of the said grievance directed by its order dated 9.3.1999 to the Management to deposit an amount of Rs.30 lakhs. The statutory obligation of the principal employer to pay the wages or difference in wages on failure of the contractor, cannot be diluted or varied by the Court's order and infact, there is no such order. The respondents are therefore, liable to make the difference good and the Management having paid an amount of Rs.24,65,778/- to the contractor (TMSS) is no ground to deny the said arrears or difference in salary to the contract workers engaged through the same agency.

24. Now coming to the last issue of

effecting/disbursing the balance of salary/wages, the same exercise cannot be undertaken by this Court in contempt proceedings. At the same time, there are disputed issues between the parties which come in the way of disbursement of the amount deposited with this Court. The first difficulty is about the rate of salary/wages. The respondents on one hand claim that the wage rate was Rs.75/- per day, but at the same time, there is no reliable document to support this rate of daily wages and on the contrary the Union has placed on record a copy of the Settlement which was in force till 30.6.1999. As the parties are at variance on the rate of wages payable to the contract workers as on the date of the order i.e. 23.3.1998 the same issue requires adjudication.

. Secondly, it cannot be accepted as a matter of fact that each of the 90 workers were present for all the days of the month and therefore, the number of working days in respect of each contract worker are required to be ascertained from the record that may be available with the principal employer or with the contractor as the case may be. Unless the amount payable to each of the contract worker is determined after ascertaining the rate of salary and number of days worked in each month, the amount of arrears payable cannot be ascertained/calculated or determined and therefore, the amount of Rs.30 lakhs

deposited with the Registry of this Court and subsequently invested, cannot be disbursed as at present. The Division Bench of this Court in its order dated 11.2.2002 clearly observed "if any dispute has arisen between the parties in implementing and enforcement of the order dated 23.3.1998 such dispute needs to be resolved by a competent forum and not by the writ Court". The Division Bench further proceeded to observe that the remaining claim of the workers will have to be resolved by the appropriate forum and more particularly arising in connection with the implementation of the order dated 23.3.1998. Such an adjudication cannot be undertaken in the contempt proceedings.

. The issue for disbursement of arrears of salary can be either adjudicated by the Labour Court in an application filed under Section 33-C(2) of the Industrial Disputes Act, or the parties may by a joint agreement constitute a Board of Conciliators headed by a retired Labour/Industrial Court Judge and with two members one from each side or in the alternative they can by agreement refer the issue to any third party. It would be, therefore, in the interest of both the parties that amongst themselves they finalise or nominate the forum for resolving the said issues for disbursement of the arrears of salary

and in the alternative the Union may on its own approach the Labour Court by an application under Section 33-C(2) of the Industrial Disputes Act for determination of the salary and the payment of arrears.

25. In the result, it is held that the respondents are not guilty of any act amounting to wilful breach of this Court's order dated 23.3.1998 regarding the payment of salary to the contract workers engaged through TMSS. It is further held that the respondent-Management is responsible for paying the arrears of wages and the amount deposited with the Registry of this Court can be disbursed after the said amount is determined by any of the modes/forums as stated hereinabove.

. The Petition is disposed of accordingly. Rule discharged with no order as to costs.

[B.H.MARLAPALLE,J.]